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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/677,935	10/02/2003	Michael Patrick Charbeneau		9727

7590 06/01/2005
Mark R. Malek
202 North Harbor City Blvd
Suite 200
Melbourne, FL 32935

EXAMINER

CHAN, KO HUNG

ART UNIT	PAPER NUMBER
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3632

DATE MAILED: 06/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/677,935

Applicant(s)

CHARBENEAU, MICHAEL
PATRICK

Examiner

Korie H. Chan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 March 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 4-13 and 15-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 4-13 and 15--17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 4, 7, 8, and 10-12 are rejected under 35 U.S.C. 102(e) as being anticipated by Byrd (US patent no 6,581,891). Byrd discloses a retaining device for use in a vehicle comprising: substantially flat body (10, figure 2) having an upper portion (24, figure 2), a lower portion (28, figure 2), and a medial portion (44), the body having a octagonal shape, plurality of spaced apart apertures (44) formed in the medial portion, a first plurality of longitudinal passageways (22) formed in the upper portion, and a second plurality of longitudinal passageways (26) formed in the lower portion; and first mounting members being strap (34, figure 1B) that matingly engage the first plurality of passageways, and a second mounting member being strap (36, figure 1B) that matingly engage the second plurality of passageways so that the body may be detachably mounted to allow at least one object (40) to be retained on the body when mounted wherein the first and second plurality of passageways (22 and 26) are of the same shape but different from the shape of the spaced apertures (44).

Claims 4-6 are rejected under 35 U.S.C. 102(b) as being anticipated by Kifer (US patent no 5,863,092). Kifer discloses a retaining device for use in a vehicle comprising: substantially flat body (14, figure 3) having an upper portion, a lower, and a medial portion (16), the body having a polygonal shape, plurality of spaced apart C-shaped apertures (16) formed in the medial portion, a first plurality of longitudinal passageways (upper round holes where screws are inserted, figure 1 and 3) formed in the upper portion, and a second plurality of longitudinal passageways (lower round holes where screws are inserted, figure 1 and 3) formed in the lower portion; and first mounting members being (screws, figure 3) that matingly engage the first plurality of passageways, and a second mounting member (screws, figure 3) that matingly engage the second plurality of passageways so that the body may be detachably mounted to allow at least one object (18) to be retained on the body when mounted; wherein the first and second plurality of passageways (round holes where screws are inserted) are of the same shape but different from the shape of the spaced apertures (16).

Claim Rejections - 35 USC § 103

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Byrd (US patent no 6,581,891) in view of Malmstrom (US patent no. 4,923,247). Byrd disclosed all the claimed features of applicant's invention except for indicia on the body. To provide indicia on article holders are notoriously old and well-known. It has the well-known purpose of advertising. Malmstrom teaches in a flat body member having indicia

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(14) on the body. It would have been obvious to one of ordinary skill in the art to have modify provided Byrd's body with indicia as taught by Malmstrom for advertising.

Claims 7, 8, 10-12, 15, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kifer (US patent no. 5,863,092) in view of Bell (US patent no. 6,105,839) and Byrd (US patent no. 6,581,891). Kifer disclosed all the claimed features of applicant's invention as demonstrated above, except for having passageways of longitudinal passageways for receiving straps. However, mounting article to a back seat via the strap type of mounting means through longitudinal passages is notoriously old and well-known in the art. They are known to have the advantage of detachable mounting a retaining body to the seat.

Bell teaches in a retaining device for use in a vehicle comprising: body (figure 1) having an upper portion (6, figure 1), a lower portion (7, figure 1), and a medial portion (19), the body having a polygonal shape, plurality of spaced apart apertures (16 on bar 19) formed in the medial portion, a first plurality of passageways (16 on bar 6) formed in the upper portion, and a second plurality of passageways (17 on bar 7) formed along the longitudinal axis of the lower portion; and first pair of mounting members being straps (30, figure 5) that matingly engage the first plurality of passageways, and a second pair of mounting members (33, figure 7) that matingly engage the second plurality of passageways so that the body may be detachably mounted within the vehicle to allow at least one object to be retained on the body when mounted. It would have been obvious to one of ordinary skill in the art to have modified the mounting members and passageways of Kifer such that it is of the strap type mating with

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longitudinal passages as taught by Bell so as to provide the well-known advantage of detachable mounting the retaining device to a vehicle seat.

Kifer and Bell combined does not show the second passageway is longitudinal passaway and the body is of octagonal shape.

Further, to provide first and second plurality of passageway of similar shape would have been an obvious design choice. It has the known advantage of ease in manufacturing. Both Kifer and Byrd demonstrate having upper and lower passageways of similar shape but different from the spaced apertures as discussed above. It would have been to one of ordinary skill in the art to have modify the second passageways of Kifer and Belle combined such that they are similar in shape to the first passageway as taught by Byrd for ease in manufacturing. Byrd also teaches making the body of octagonal shape. It would have been obvious to one of ordinary skill in the art to have made the body of Kifer and Bell combined such that it is of octagonal shape as taught by Byrd for aesthetics.

Claims 9 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kifer (US patent no. 5,863,092) in view of Bell (US patent no. 6,105,839) and Byrd (US patent no 6,581,891) as applied to claims 4 and 13 above, and further in view of Malmstrom (US patent no. 4,923,247). Kifer, Bell, and Byrd combined disclosed all the claimed features of applicant's invention except for providing indicias on the body. To provide indicia on article holders are notoriously old and well-known. It has the well-known purpose of advertising. Malstrom teaches in a flat body member having indicia (14) on the body. It would have been obvious to one of ordinary skill in the art to have

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modify provided the body of Kifer, Bell, and Byrd combined with indicia as taught by Malmstrom for advertising.

Response to Arguments

Applicant's arguments with respect to claims 4-13 and 15-17 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The remaining cited art of record demonstrate body members with longitudinal passways.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Korie H. Chan whose telephone number is 571-272-6816. The examiner can normally be reached on Monday - Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Leslie Braun can be reached on 571-272-6815. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Korie H. Chan
Primary Examiner
Art Unit 3632

khc
May 26, 2005